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**FILED**

JUL 15 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiffs  
FIBERTREK, INC., LAWRENCE P. WAGNER,  
and JOHN G. PEERY

**E-FILING**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

FIBERTREK, INC., a Nevada corporation;  
LAWRENCE P. WAGNER, an individual;  
and JOHN G. PEERY, an individual,

Plaintiffs,

v.

PREFERRED CORPORATE SERVICES,  
INC., a Colorado Corporation; DOUGLAS  
GREGG, an individual; TDG, LLC, a  
Colorado Limited Liability Company;  
NEIL SMITH, an individual and DOES 1-  
100, inclusive,

Defendants.

CASE NO.

**COMPLAINT**

**03415**

**RS**

1. RICO
2. NEGLIGENCE
3. NEGLIGENT MISREPRESENTATION
4. INTENTIONAL MISREPRESENTATION
5. FRAUD
6. CONSPIRACY TO COMMIT FRAUD
7. CONVERSION
8. BREACH OF CONTRACT
9. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
10. UNJUST ENRICHMENT

**DEMAND FOR JURY TRIAL**

Plaintiffs FIBERTREK, INC., LAWRENCE P. WAGNER, and JOHN G. PEERY  
(hereinafter collectively "Plaintiffs" or individually "FIBERTREK", "WAGNER", and  
"PEERY") allege as follows:

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**JURISDICTION AND VENUE**

1  
2 1. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because the  
3 action arises under a federal statute, 18 U.S.C. §§ 1961 *et seq.*, the Racketeer Influenced and  
4 Corrupt Organizations Act ("RICO").

5 2. This Court has original jurisdiction under 28 U.S.C. § 1332, in that it is a civil  
6 action between citizens of different states in which the matter in controversy exceeds, exclusive  
7 of costs and interest, seventy-five thousand dollars.

8 3. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

9 4. Venue is proper in this District pursuant to 28 U.S.C. 1391(a)(2) and (b)(2)  
10 because a substantial part of the events or omissions giving rise to the claims herein occurred  
11 within this District.

**INTRADISTRICT ASSIGNMENT**

12  
13 5. Intradistrict assignment of this matter to the San Jose Division of this Court is  
14 appropriate pursuant to Civil Local Rule 3-2(c), (e) as a substantial part of the events or omissions  
15 giving rise to the claims herein occurred within the jurisdiction of the San Jose Division.

**THE PARTIES**

16  
17 6. Plaintiff FIBERTREK is a corporation organized and existing under the laws of  
18 the State of Nevada, with its principal place of business in the State of California, County of  
19 Santa Clara.

20 7. Plaintiff WAGNER is an individual and legal resident of the State of California  
21 and the Chief Executive Officer of FIBERTREK.

22 8. Plaintiff PEERY is an individual and legal resident of the State of California and  
23 the Chief Technology Officer of FIBERTREK.

24 9. Defendant PREFERRED CORPORATE SERVICES, INC. (hereinafter "PCS") is  
25 a corporation organized and existing under the laws of the State of Colorado with its principal  
26 place of business in the State of Colorado, County of Douglas.

27 10. Defendant DOUGLAS GREGG (hereinafter "GREGG") is an individual and legal  
28 resident of the State of Colorado. GREGG is the President of PCS.

11. Defendant T.D.G., LLC (hereinafter "TDG") is a Colorado Limited Liability Company with its principal place of business in the State of Colorado, County of Larimer. Plaintiffs' are informed and believe, and thereon allege, TDG is an unincorporated association consisting of one member, Defendant NEIL E. SMITH (hereinafter "SMITH"). SMITH is a legal resident of the State of Colorado, County of Jefferson.

12. Defendant SMITH is an individual and legal resident of the State of Colorado. SMITH is the Global Business Manager of TDG.

13. Plaintiffs do not know the true names and capacities, whether individual, corporate, associate or otherwise of the other Defendants sued herein as DOES 1 through 100 and, therefore, sues them by those fictitious names. Plaintiffs are informed and believe, and on the basis of that information and belief allege, that each fictitiously-named Defendant, and each of them, were contractually, negligently, fraudulently or otherwise in some manner legally responsible for each of the acts, omissions, events or occurrences alleged herein and that Plaintiffs' damages are the direct and proximate result of said acts, omissions, events or occurrences. The names, capacities and relationships of DOES 1 through 100 will be alleged by amendment to this Complaint when they become known.

14. Plaintiffs are informed and believe, and thereon allege, that there exists, and at all times herein mentioned existed, a unity of interest and ownership between Defendants such that all individuality and separation ceased and each Defendant became the alter-ego of the other Defendants.

15. Plaintiffs are informed and believe, and thereon allege, that Defendants are, and at all times herein mentioned were, so inadequately capitalized that, compared to the business to be done by them and where such business was being conducted in relation to the Partnership and the risk of loss attendant thereto, the available capital of the entity was trifling. Legal formalities and obligations were disregarded such that the separate identity of the entity ceased to exist and such entity became the alter ego of the Defendant, and vice versa.

16. Adherence to the fiction of any separate existence of Defendants as distinct entities apart from the other defendants would permit an abuse of the corporate privilege so as to sanction

1 a fraud or promote injustice.

2 17. Plaintiffs are informed and believe, and thereon allege that Defendants, and each  
3 of them, were, at all times mentioned in this Complaint agents and employees of the other  
4 Defendant(s), and in performing the acts alleged in this Complaint, were acting in the course and  
5 scope of such agency and employment.

6 **GENERAL ALLEGATIONS**

7 18. In approximately January 2000, PEERY along with two business partners Bill  
8 Henderson and Lee Jolly drafted the Fibercon business plan to fund a fiber-optics project called  
9 Elko. Pursuant to the business plan, Lee Jolly was responsible for obtaining funding for the Elko  
10 project.

11 19. After failing to obtain the necessary funding for several years, Lee Jolly quit the  
12 business team prior to January 2006. The remaining business partners decided the business plan  
13 needed to be revised. WAGNER joined the business team and, along with PEERY, completely  
14 revised and rewrote the Fibercon business plan. PEERY is introduced to SMITH of TDG to  
15 assist in obtaining the necessary funding for the Elko project.

16 20. PEERY and SMITH continue to pursue funding sources and SMITH suggested the  
17 Company should go "Public" to obtain the amount of funding needed for the Elko project.  
18 SMITH introduced PEERY to a business associate, GREGG of PCS. GREGG is introduced by  
19 SMITH as a person with experience in the Reverse Take-Over Mergers (hereinafter "RTO").  
20 Based on the recommendations of SMITH and GREGG, the decision is made to pursue an RTO  
21 with the assistance of SMITH and GREGG and their respective companies.

22 21. Since Fibercon was not incorporated at this time, SMITH and GREGG  
23 recommended merging with a publicly traded shell company. Bill Henderson suggests Resource  
24 Materials, Inc. (hereinafter "RMI"), a Nevada Corporation, as a potential shell company. At this  
25 point, the business plan is renamed as RMI.

26 22. In order to raise the necessary funding, SMITH suggests acquiring an existing  
27 publicly traded company that needs a viable income producing project to offer its shareholders  
28 and investors. SMITH claims the necessary funding for the Elko project can be raised through

1 this process.

2 23. On July 1, 2006, SMITH and GREGG recommend RMI acquire a shell company  
3 identified as "PCS032." SMITH agreed to notify RMI up-front of the cost of the shell company,  
4 the identity of the securities attorney for the company and the identity of the Certified Public  
5 Accountant for the company. On July 3, 2006, SMITH requests RMI provide \$10,000 to obtain  
6 information on the shell company. SMITH informs RMI, "(GREGG) thru PCS and I assisting  
7 him, will continue to work with you on this entity to provide public and banking funds for any  
8 and all of your ventures." GREGG and SMITH provide RMI with general information about the  
9 shell company PCS032. GREGG and SMITH inform RMI that PCS032 is a Nevada Corporation  
10 formed in 1999. It is currently in business, located in Irvine, California, working in the  
11 telemarketing market and in outsourcing data entry services for US companies to India and China.  
12 PCS032 has 175 million common shares and 500,000 preferred shares authorized with  
13 10,457,387 of the common shares issued and no preferred shares issued. PCS032 has 43  
14 shareholders and four persons/entities control 99% of the company.

15 24. GREGG and SMITH inform RMI the purchase price for the shell company  
16 PCS032 is \$300,000, with an option fee of \$10,000. RMI is told the company must be purchased  
17 in cash and is available immediately through a New York PinkSheets Company Broker. GREGG  
18 and SMITH assure RMI that all books, records and filings for PCS032 are complete and current.

19 25. GREGG and SMITH inform RMI that all requested information on PCS032  
20 including the company name, symbol, CUSIP No., financial records, minute records, shareholders  
21 list, the identities of the members of the board of directors, the names of selling shareholders, the  
22 identity of its CPA, and the identity of its Securities Counsel will be provided upon signing the  
23 option and payment of the option fee.

24 26. GREGG and SMITH outlined the RTO procedure for RMI. RMI will merge into  
25 the shell company identified as PCS032. The stock of RMI will be exchanged for shares of the  
26 shell company and the shell company changes its name to RMI. The officers of the shell  
27 company resign and the shell company directors elect RMI officers as the new directors before  
28 resigning.

27. On July 6, 2006, WAGNER and PEERY, through their own inquiry, are informed by SMITH that GREGG holds a management position with the proposed shell company.

28. In order to move forward with the RTO, on July 21, 2006, SMITH suggests RMI execute a written contract with GREGG and PCS and SMITH will continue to assist GREGG and PCS throughout the RTO transaction. SMITH again confirms the shell company is clean and that upon acquisition, RMI would control 90% of the outstanding stock.

29. On July 26, 2006, RMI receives and executes a written consulting agreement from PCS (Exhibit A). Pursuant to the agreement, PCS agrees to arrange for and provide (RMI) with certain due diligence and project analysis services including reviewing the due diligence materials related to the target company PCS032 for the development of a capital formation project to be lead by PCS. The agreement called for PCS to present its findings and recommendations via a formal written proposal following PCS' due diligence and project analysis review. On behalf of RMI, WAGNER paid a non-refundable \$5,000 retainer fee to PCS for services rendered under the consulting agreement.

30. By September 6, 2006, PCS fully performed its due diligence and project analysis review pursuant to the July 26, 2006 consulting agreement. On September 6, 2006, GREGG forwarded a written formal proposal (Exhibit B) for RMI to raise the necessary capital through an RTO with the shell company that had been previously discussed, PCS032. The proposal references the "public vehicle first discussed" and "the contemplated shell company" in reference to PCS032. The purchase terms for the shell company identified in the proposal are identical to the purchase terms previously provided to RMI for PCS032.

31. Pursuant to the terms of the September 6, 2006 PCS proposal, RMI was to pay an option fee of \$10,000 to lock up the "contemplated shell company." If RMI elected not to exercise the option on the "initial shell company," PCS was to deliver two additional (like) shell companies under the same option. Upon notification to exercise its option to purchase the shell company, PCS was to require the purchase amount of \$300,000 to be placed in a PCS trust account with Wells Fargo Bank. PCS also agreed to provide RMI with all necessary documents and events necessary to effectuate the transaction.



32. Pursuant to the terms of the September 6, 2006 PCS proposal, PCS was to retain 5% of the outstanding shares of the shell (PCS032) as its fee for arranging and providing the shell to RMI. PCS was also to receive, for its initial and continuing developmental and consulting services, a retainer in the amount of \$20,000 per month, for 12 months, or until the first \$20 million in capital had been raised, whichever occurred first. PCS was also to receive 10% of the gross amount of all capital arranged for the company and required that RMI pre-pay all travel and travel related expenses and reimburse PCS for all out of pocket expenses. SMITH provides a time line stating the process might take 60 days, and possibly up to 3 months, to complete the RTO and associated registration. Also in that communication, SMITH states that past the maximum (3) three month period, GREGG and SMITH would never take another penny except as a commission on the receipt of funds.

33. SMITH and GREGG emphasized the up-front costs and fees associated with the RTO, including the \$300,000 purchase price, are only loans to the new corporation and will all be recovered through the public offering and capital raised therein. RMI is only committing the option fee of \$10,000, as the balance of \$290,000 will be kept in the PCS trust account until the transaction is complete and all items are satisfied.

34. On September 19, 2006, RMI, at the insistence of Bill Henderson, requested information from SMITH and GREGG including references to five former clients who they had represented in similar transactions. SMITH responds that it is too late for this as "it has been 2 months since we acquired the Shell for you and over 2 weeks since we sent you our proposal" (referencing the September 6, 2006 proposal). GREGG responds via email to SMITH that providing references is not necessary as he and SMITH are merely facilitators. As of September 19, 2006, RMI never authorized SMITH or GREGG to purchase a shell company and had not paid the \$10,000 option fee.

35. In an effort to resurrect the proposed transaction, on September 19, 2006, SMITH informs RMI that the transaction would be completed by securities attorneys for all parties and that RMI would probably not be able to find another shell company with "ALL those authorized shares and READY to go to market." This reference is again to the shell company identified as

1 "PCS032." On the following day, September 20, 2006, SMITH informs RMI if RMI goes  
2 through with the transaction, the transaction would be handled by the law firm of Bryan Cave,  
3 LLP.

4 36. On September 20, 2006, GREGG sends correspondence to SMITH indicating he is  
5 not surprised to hear that PEERY and WAGNER are backing out. GREGG indicates he had to  
6 renew the option three months in a row now and they have to cut their losses at this point to avoid  
7 losing the money they had invested.

8 37. On September 20, 2006, WAGNER wire transfers \$10,000 for the Option to  
9 purchase the shell company identified as PCS032. The money is transferred to the PCS' Wells  
10 Fargo Bank Account provided by GREGG and SMITH.

11 38. Bill Henderson is dissatisfied with the GREGG's and SMITH's refusal to provide  
12 the references requested on September 19, 2006. Bill Henderson decides to back out of the deal  
13 and takes his shell company, RMI, with him. Upon notification of Henderson's decision,  
14 GREGG and SMITH inform WAGNER and PEERY that this is not a problem and that a new  
15 corporation could be formed to provide for the RTO.

16 39. On September 25, 2006, WAGNER and PEERY decide to move forward with the  
17 purchase of the shell company identified as PCS032 and WAGNER wire transfers \$150,000 for  
18 the first half of the shell purchase to the PCS' trust account at Wells Fargo Bank. SMITH and  
19 GREGG refuse to provide the company information for the shell company which they agreed to  
20 do at the time the option fee was deposited. SMITH and GREGG fail to provide the books and  
21 records of the shell company identified as PCS032 as they agreed to do within 1 day of payment  
22 of the option fee. SMITH and GREGG reassure WAGNER and PEERY this information will be  
23 provided.

24 40. On September 27, 2006, WAGNER and PEERY are informed the costs of  
25 completing the merger could be as high as \$95,000, in addition to the \$140,000 owed on the  
26 purchase price. WAGNER requests the name of the shell company before agreeing to pay this  
27 sum. The next day, September 28, 2006, SMITH responds that WAGNER and PEERY need not  
28 worry about the additional money requirement as "WE WILL handle it" in reference to SMITH



1 and GREGG. SMITH does not provide the name of the shell company as requested.

2 41. Later on September 28, 2006, WAGNER and PEERY learn SMITH and GREGG  
3 secured the shell corporation by way of a Note. SMITH notifies WAGNER and PEERY that he  
4 cannot provide the name of the company because the shell company is in a "quiet period" while  
5 the RTO is completed. SMITH also requests the monthly retainer payments to PCS and TDG be  
6 made via wire transfer beginning on October 1, 2006 rather than October 15, 2006 and continue  
7 on the first of each month until the transaction is completed.

8 42. On September 29, 2006, WAGNER makes the initial retainer fee wire transfer of  
9 \$10,000 to both SMITH and GREGG to the PCS and TDG accounts provided by SMITH and  
10 GREGG, respectively.

11 43. In or about October, 2006, WAGNER and PEERY are informed by PCS that a  
12 new company needs to be created, to replace RMI, to merge with PCS032. WAGNER and  
13 PEERY form FIBERTREK, a company incorporated under the laws of the State of Nevada in  
14 November 2006.

15 44. On October 23, 2006, SMITH, GREGG, WAGNER and PEERY met in Campbell,  
16 California at FIBERTREK's offices and later in San Jose, California. SMITH and GREGG  
17 presented a set of documents describing the RTO procedures and provided a timeline for the  
18 transaction. The data sheet provided identified the shell company as PCS032. A name of the  
19 shell company is not provided. At this meeting, WAGNER and PEERY are informed PCS  
20 provided a Note to cover the remaining \$140,000 balance used to purchase the controlling interest  
21 in the shell company. The \$300,000 was to be deposited as proof to the seller that the means  
22 existed to complete a purchase transaction. A controlling interest in the shell company was  
23 purchased without authorization from WAGNER or PEERY. SMITH and GREGG failed to  
24 provide WAGNER and PEERY with the general information and financial records concerning the  
25 shell company when the option fee was paid as they agreed. WAGNER and PEERY never had  
26 an opportunity to perform a due diligence review of the shell company prior to the purchase as  
27 WAGNER and PEERY as they agreed.

28 45. At a dinner meeting on October 23, 2006 in San Jose, California, WAGNER and

1 PEERY are informed for the first time that the shell company controlling interest they purchased  
2 is All Western Enterprises, Inc. (hereinafter "AWE"). At that time, WAGNER and PEERY  
3 believed AWE was the shell company identified throughout as PCS032.

4 46. On November 11, 2006, SMITH and GREGG inform PEERY and WAGNER that  
5 the Note issued by PCS will create a conflict of interest. WAGNER agrees to pay the value of the  
6 Note and wire transfers the balance due of \$140,000 to the PCS trust account. At this time,  
7 PEERY and WAGNER are informed an additional amount of approximately \$25,000 will be  
8 needed for miscellaneous expenses to complete the RTO.

9 47. On November 29, 2006, WAGNER and PEERY learn the shell company has been  
10 fully paid for. WAGNER and PEERY never authorized the release of the funds paid to the PCS  
11 trust account for the purchase of AWE. WAGNER and PEERY were assured they had complete  
12 control over the money deposited into PCS trust account. WAGNER and PEERY never had an  
13 opportunity to review and reject the acquisition of AWE as stated in the September 6, 2006  
14 Consulting Agreement with PCS.

15 48. WAGNER and PEERY were informed the merger with AWE was completed on  
16 February 28, 2007 and FIBERTREK became a publicly traded company, under the symbol  
17 FBRK, on March 7, 2007.

18 49. Pursuant to the terms of the September 6, 2006 PCS proposal, on March 16, 2007,  
19 WAGNER and PEERY received a request from SMITH and GREGG to issue them 5% of the  
20 outstanding shares of FIBERTREK. A board resolution was signed and 2.5 million shares in  
21 FIBERTREK were issued to SMITH and GREGG, or 1.25 million shares each.

22 50. In May, 2007, after repeated requests to SMITH and GREGG since September  
23 2006, WAGNER and PEERY first receive documentation on AWE. SMITH and GREGG had  
24 agreed to provide these documents within one day of the payment of the option fee, paid on  
25 September 20, 2006, and prior to payment of the balance of \$290,000 on the purchase price. The  
26 documents received did not include any transaction records for the purchase of AWE or financial  
27 records of the company. Upon reviewing the AWE documents provided in May 2007, WAGNER  
28 and PEERY first learned the company they purchased and merged with FIBERTREK was not the

1 shell company identified as PCS032. AWE was not fully compliant, registered and ready for  
2 public trading as PCS032 was represented to be. PCS032 was also represented to have been in  
3 business since 1999 with documented financial records, audits, current filings and sufficient in-  
4 house support. AWE was not fit for a merger and was not worth near the \$300,000 paid by  
5 WAGNER. AWE had no financial records, no filings and other documentation needed for the  
6 RTO. The delays in providing the company information for AWE and in finalizing the RTO,  
7 resulting in increased costs and expenses to WAGNER and PEERY in excess of \$200,000, were  
8 the result of SMITH and GREGG attempting to restore AWE to enable the RTO to be completed.

9 51. WAGNER and PEERY have repeatedly requested all documents relating to the  
10 acquisition of AWE and the merger of AWE with FIBERTREK. GREGG and SMITH have  
11 never provided transaction records verifying the \$300,000 was used to purchase AWE, to whom  
12 the \$300,000 was paid, and when it was paid. On June 1, 2007, WAGNER and PEERY learned  
13 AWE was acquired for significantly less than the \$300,000 paid to PCS' trust account.

14  
15 **FIRST CAUSE OF ACTION**  
16 **(For Violation of the Racketeer Influenced and Corrupt**  
**Organizations Act ("RICO") Against All Defendants)**

17 52. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 51,  
18 inclusive, as though fully set forth herein.

19 53. Plaintiffs are informed and believes and thereon alleges that the actions and  
20 conduct of the defendants as more fully described herein were in violation of 18 U.S.C. §§1962  
21 (c) and (d).

22 54. Defendants formed an association for the purpose of defrauding Plaintiffs.  
23 Defendants participated in a careful and deliberate scheme of fraud to prevent Plaintiffs' from  
24 ascertaining information about AWE, knowing if said information was fully disclosed, Plaintiffs'  
25 would not proceed with the acquisition of AWE and merger with FIBERTREK. Defendants  
26 perpetuated the fraud through the use of the United States Postal Service and United States  
27 telecommunications lines.

28 55. SMITH and GREGG made a concerted effort to conceal the identity and financial

1 status of AWE during throughout their business relationship with WAGNER and PEERY until  
2 the acquisition and merger were completed enabling the conversion of some or all of the  
3 \$290,000 deposited into what was represented as PCS' trust account. Throughout their business  
4 relationship, SMITH and GREGG represented the shell company as PCS032 with the  
5 accompanying information provided on the data sheet for PCS032 at the October 23, 2006  
6 meeting in San Jose, California. AWE was not the shell company identified as PCS032 and was  
7 valued at substantially less than the company identified as PCS032.

8 56. The successful completion of this scheme involved the careful and deliberate  
9 orchestration by SMITH and GREGG of numerous individuals and entities working with them  
10 including persons who SMITH and GREGG represented to be securities attorneys, paralegals and  
11 accountants in carrying out this scheme. Each individual and entity working with SMITH and  
12 GREGG, at the insistence of SMITH and GREGG, refused to disclose the name of the shell  
13 company purchased by Plaintiffs and to provide documentation verifying the acquisition of AWE  
14 and the financial terms of said acquisition.

15 57. Plaintiffs are informed and believe and on that basis allege the association between  
16 SMITH and GREGG, along with the individuals and entities working with them, engaged in a  
17 "pattern of racketeering activity" within the meaning of 18 U.S.C. §1961(1) and (5).  
18 Collectively, Defendants and the individuals and entities working with them prevented Plaintiffs'  
19 from learning the attributes of AWE until after the acquisition and merger occurred and the  
20 \$290,000 was withdrawn from what was represented to be a PCS trust account under the  
21 exclusive control of WAGNER and PEERY. This pattern of activity of withholding information  
22 was carried out for a period of approximately eleven months.

23 58. Defendants executed this scheme through the use of the United States Postal  
24 Service and interstate wire communications in violation of 18 U.S.C. §§ 1341 and 1343.  
25 Defendants utilized the United States Postal Service to correspond with Plaintiffs' in furtherance  
26 of the fraud alleged herein. Defendants utilized interstate wire communications to receive all  
27 payments made from Plaintiffs to Defendants. Specifically, **on three occasions**, Defendants  
28 directed Plaintiffs' to utilize the telecommunication wires within the United States to transfer

1 money to a bank account represented as a PCS trust account. These wire transfers of funds  
2 occurred on September 20, 2006, September 25, 2006 and November 11, 2006, respectively.  
3 Plaintiffs were also directed to utilize the telecommunication wires within the United States to  
4 transfer monthly retainers to SMITH and GREGG from October 2006 through April 2007.

5 59. In addition to engaging in the above described conduct and actions in violation of  
6 18 U.S.C §1962(c), Plaintiffs are informed and believe and on that basis allege that the  
7 Defendants also violated 18 U.S.C. §1962(d), conspiracy to violate 18 U.S.C §1962(c).

8 60. Plaintiffs are informed and believe and on that basis allege that there existed  
9 among the defendants an agreement to conduct or participate in a scheme to defraud Plaintiffs.  
10 This conspiracy extended to the individuals and entities working with SMITH and GREGG.  
11 SMITH and GREGG, as well as the individuals and entities working with them formed an  
12 association for the purpose of defrauding PEERY and WAGNER by (1) keeping the unauthorized  
13 acquisition of AWE confidential; (2) keeping the attributes of AWE confidential until the  
14 acquisition and merger were completed; and (3) by refusing to produce transaction records for the  
15 acquisition and merger.

16 61. Plaintiffs have suffered injury as a result of the Defendants' conduct and actions as  
17 described above, which were all done in violation of 18 U.S.C §§1962(c) and (d). Plaintiffs were  
18 deceived by the Defendants' fraudulent and deceitful activities into expending an approximate  
19 amount of \$786,000 as well as the transfer of 2.5 million shares of FIBERTREK to Defendants.

20 62. As a direct and proximate result of the conduct of Defendants, and each of them,  
21 Plaintiffs have been damaged in an amount yet to be ascertained, the actual amount to be proven  
22 at the time of trial.

23 63. Pursuant to 18 U.S.C. §1964(a), Plaintiffs' request an order that each Defendant  
24 divest themselves of and/or deliver to Plaintiffs all of the proceeds of the monies illegally  
25 obtained.

26 64. Pursuant to 18 U.S.C. §1964(c), Plaintiffs' also seeks treble damages, the cost of  
27 suit herein and attorney's fees.

28 //

**SECOND CAUSE OF ACTION**  
**(For Negligence Against All Defendants)**

65. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 64, inclusive, as though fully set forth herein.

66. Defendants, and each of them, owed a duty of care to perform the services they agreed to provide through the September 6, 2006 Consulting Proposal and to provide truthful and accurate information to Plaintiffs with respect to its services in connection with the transactions involving Plaintiffs.

67. Defendants breached that duty of care through their actions and/or omissions, including but not limited to, acquiring AWE without authorization from Plaintiffs, by failing to provide general information and financial records of AWE within one day of the payment of the \$10,000 option fee, by failing to disclose the attributes of AWE necessary for a due diligence review prior to directing payment for the acquisition of AWE, by releasing funds from the PCS' trust account without authorization from Plaintiffs, and by failing to provide transaction records for the acquisition or merger transactions and failing to provide accounting records for the services allegedly performed by Defendants.

68. As a direct and proximate result of the negligence of these Defendants, Plaintiffs have been damaged in an amount not yet ascertained, the actual amount to be proven at the time of trial.

**THIRD CAUSE OF ACTION**  
**(For Negligent Misrepresentation Against All Defendants)**

69. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 68, inclusive, as though fully set forth herein.

70. Pursuant to their agreement with Plaintiffs, Defendants had a duty to provide information concerning the shell company AWE at the time the option fee was paid to enable Plaintiffs to conduct a due diligence review of AWE before the acquisition and merger were completed.

71. Defendants breached that duty of care through their actions and/or omissions,



1 including but not limited to, acquiring AWE without authorization from Plaintiffs, by failing to  
2 provide general information and financial records of AWE within one day of the payment of the  
3 \$10,000 option fee, by failing to disclose the attributes of AWE necessary for a due diligence  
4 review prior to directing payment for the acquisition of AWE, by releasing funds from the PCS'  
5 trust account without authorization from Plaintiffs, and by failing to provide transaction records  
6 for the acquisition or merger transactions and failing to provide accounting records for the  
7 services allegedly performed by Defendants.

8 72. From July 2006 through May 2007, Defendants represented Plaintiffs would  
9 acquire and merge with a shell company identified as PCS032. Defendants subsequently  
10 switched the shell companies and acquired AWE without disclosing this information to Plaintiffs  
11 and without authorization from Plaintiffs.

12 73. Defendants knew, or should have known, AWE was considerably less valuable  
13 than the shell company identified as PCS032. Defendants knew, or should have known, that if  
14 the identity and the business and financial history of AWE were disclosed to Plaintiffs, Plaintiffs  
15 would have declined to acquire AWE and merge AWE with FIBERTREK.

16 74. As a direct and proximate result of the negligent misrepresentations made by  
17 Defendants and Plaintiffs justifiable reliance thereon, Plaintiffs have been damaged in an amount  
18 not yet ascertained, the actual amount to be proven at the time of trial.

19  
20 **FOURTH CAUSE OF ACTION**

21 **(For Intentional Misrepresentation Against All Defendants)**

22 75. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 74,  
23 inclusive, as though fully set forth herein.

24 76. Pursuant to their agreement with Plaintiffs, Defendants had a duty to provide  
25 information concerning the shell company AWE at the time the option fee was paid to enable  
26 Plaintiffs to conduct a due diligence review of AWE before the acquisition and merger were  
27 completed.

28 77. Defendants breached that duty of care through their actions and/or omissions,  
including but not limited to, acquiring AWE without authorization from Plaintiffs, by failing to

1 provide general information and financial records of AWE within one day of the payment of the  
2 \$10,000 option fee, by failing to disclose the identity of AWE necessary for a due diligence  
3 review prior to directing payment for the acquisition of AWE, by releasing funds from the PCS'  
4 trust account without authorization from Plaintiffs, and by failing to provide transaction records  
5 for the acquisition or merger transactions and failing to provide accounting records for the  
6 services allegedly performed by Defendants.

7 78. From July 2006 through May 2007, Defendants represented Plaintiffs would  
8 acquire and merge with a shell company identified as PCS032. Defendants subsequently  
9 switched the shell companies and acquired AWE without disclosing this information to Plaintiffs  
10 and without authorization from Plaintiffs.

11 79. Defendants knew, or should have known, AWE was considerably less valuable  
12 than the shell company identified as PCS032. Defendants knew, or should have known, that if  
13 the identity and the business and financial history of AWE were disclosed to Plaintiffs, Plaintiffs  
14 would have declined to acquire AWE and merge AWE with FIBERTREK.

15 80. Plaintiffs justifiably relied on the representations made by these Defendants in  
16 their respective documentation prepared by them and in the course of their relationship including,  
17 but not limited to, (1) the shell company to be acquired was PCS032; (2) Plaintiffs would receive  
18 information on PCS032 when the option fee was paid to enable a due diligence review of PCS032  
19 before opting to acquire the shell company identified as PCS032; and (3) all funds transferred to  
20 PCS' trust account were under the exclusive control of Plaintiffs. Plaintiffs relied on these  
21 representations in evaluating whether to acquire the shell company they believed was PCS032,  
22 transfer the sum of \$300,000 for the acquisition of the shell company they believed was PCS032,  
23 and merge FIBERTREK with the shell company they believed was PCS032.

24 81. As a direct and proximate result of the intentional misrepresentations made by  
25 Defendants and Plaintiffs justifiable reliance thereon, Plaintiffs have been damaged in an amount  
26 not yet ascertained, the actual amount to be proven at the time of trial.

27 82. The acts and omissions of Defendants described herein were done with a  
28 conscious disregard of Plaintiffs' rights and with a specific intent to defraud and injure Plaintiffs,

1 so as to constitute fraud, oppression, and malice under California Civil Code section 3294. By  
2 virtue of Defendants' willful and wrongful conduct, Plaintiffs are entitled to punitive and  
3 exemplary damages as determined by the court.

4  
5 **FIFTH CAUSE OF ACTION**  
6 **(For Fraud Against All Defendants)**

7 83. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 82,  
8 inclusive, as though fully set forth herein.

9 84. The acts and actions of the Defendants as described above constitute fraud as these  
10 acts and actions were done with full knowledge of its falsehood or a complete disregard for the  
11 truth.

12 85. Plaintiffs' are informed and believe and on that basis allege that the acts and  
13 actions of Defendants described above were done with the knowledge and intent to defraud  
14 Plaintiffs.

15 86. SMITH and GREGG made a concerted effort to conceal the switch of the shell  
16 companies from the shell company identified as PCS032 to AWE, the acquisition of AWE  
17 without authorization from Plaintiffs, and the identity and financial records of AWE until the  
18 acquisition and merger transactions were completed.

19 87. At the time Defendants made such representations and concealed such facts from  
20 Plaintiffs, the defendants knew such representations were fraudulent, concealed the true facts  
21 from Plaintiffs and made such misrepresentations and concealed the true facts with the express  
22 intent and ultimate object of inducing Plaintiffs to acquire AWE at a price considerably higher  
23 than its fair market value at the time of the acquisition.

24 88. Plaintiffs reasonably relied on said information and representations made by  
25 Defendants in agreeing to transfer the sum of \$300,000 for the acquisition of a shell company that  
26 had been represented by Defendants to be the shell company identified as PCS032.

27 89. Plaintiffs were ignorant of the true facts and, as a result of the Defendants  
28 fraudulent conduct, expended sums including the \$300,000 for the acquisition of a shell company  
that had been represented by Defendants to be the shell company identified as PCS032, which

1 they would not have done had they known the true facts.

2 90. Plaintiffs could not reasonably have discovered the fraud sooner because of the  
3 web of deception and complicated scheme executed by the Defendants and those persons and  
4 entities working with them in carrying out the transactions described herein.

5 91. As a direct and proximate result of the acts and conduct of Defendants, and each of  
6 them, Plaintiffs have been damaged in an amount not yet ascertained, the actual amount to the  
7 proven at the time of trial.

8 92. The acts and omissions of Defendants described herein were done with a  
9 conscious disregard of Plaintiffs' rights and with a specific intent to defraud and injure Plaintiffs,  
10 so as to constitute fraud, oppression, and malice under California Civil Code section 3294. By  
11 virtue of Defendants willful and wrongful conduct, Plaintiffs' are entitled to punitive and  
12 exemplary damages as determined by the court.

13 **SIXTH CAUSE OF ACTION**

14 **(For Conspiracy to Commit Fraud Against All Defendants)**

15 93. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 92,  
16 inclusive, as though fully set forth herein.

17 94. Plaintiffs are informed and believe and on that basis allege that Defendants acted  
18 in furtherance of a common design in perpetuation of the scheme to defraud Plaintiffs as  
19 described above. This scheme involved Defendants and individuals and entities working with  
20 them including persons who SMITH and GREGG represented to be securities attorneys,  
21 paralegals and accountants whom were directed by SMITH and GREGG to carry out and in  
22 furtherance of this scheme.

23 95. Plaintiffs are informed and believe and on that basis allege that Defendants were  
24 instrumental in establishing the ring of conspiracy and actively participated in furtherance of the  
25 conspiracy's common design.

26 96. As a direct and proximate result of the acts and conduct of Defendants, and each of  
27 them, Plaintiffs have been damaged in an amount not yet ascertained, the actual amount to the  
28 proven at the time of trial.

97. The acts and omissions of Defendants described herein were done with a conscious disregard of Plaintiffs' rights and with a specific intent to defraud and injure Plaintiffs, so as to constitute fraud, oppression, and malice under California Civil Code section 3294. By virtue of Defendants willful and wrongful conduct, Plaintiffs' are entitled to punitive and exemplary damages as determined by the court.

**SEVENTH CAUSE OF ACTION**  
**(For Conversion Against All Defendants)**

98. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 97, inclusive, as though fully set forth herein.

99. Plaintiffs' are informed and believe and on that basis allege that through the Defendants' active participation in the scheme to defraud Plaintiffs, Defendants received \$300,000 from Plaintiffs' for the acquisition of a shell company identified as PCS032 which in turn was used, at least in part, to compensate Defendants. Plaintiffs were informed this sum of money would be maintained in a PCS' trust account under the exclusive control of Plaintiffs. This conversion of funds was accomplished without the knowledge, permission or consent of Plaintiffs' and was carried out deliberately and with the specific intent to deprive Plaintiffs' of its property.

100. The conversion could not have been discovered any sooner because of the complicated fraudulent scheme of the Defendants and their efforts to conceal the scheme.

101. As a direct and proximate result of the conversion of Plaintiffs' monies, Plaintiffs have suffered damages in an amount to be proven at trial.

102. The acts and omissions of Defendants in converting Plaintiffs' monies were done with a conscious disregard of Plaintiffs' rights and with a specific intent to defraud and injure Plaintiffs, so as to constitute fraud, oppression and malice under California Civil Code section 3294. By virtue of Defendants willful conduct, Plaintiffs are entitled to punitive and exemplary damages as determine by the court.

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**EIGHTH CAUSE OF ACTION**  
**(For Breach of Contract Against All Defendants)**

103. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 102, inclusive, as though fully set forth herein.

104. On or about July 26, 2006, RMI and PCS entered into a written Agreement for Services (Exhibit A) pursuant to which PCS agreed to arrange for and provide RMI with certain due diligence and project analysis services including reviewing the due diligence materials related to the target company PCS032 for the development of a capital formation project to be lead by PCS. The agreement called for PCS to present its findings and recommendations via a formal written proposal following PCS' due diligence and project analysis review. RMI paid a non-refundable \$5,000 retainer fee to PCS for services rendered under this consulting agreement.

105. The July 26, 2006 Agreement for Services was fully performed and concluded by September 6, 2006 when PCS sent a written Consulting Proposal to RMI (Exhibit B). The Consulting Proposal set forth a recommended plan for RMI to raise the necessary capital to fund the Elko project through an RTO with the shell company that had been previously discussed, PCS032. The proposal references the "public vehicle first discussed" and "the contemplated shell company" in reference to the prior discussions concerning PCS032. The purchase terms for the shell company identified in the proposal are identical to the purchase terms previously provided by Defendants for PCS032.

106. Pursuant to the terms of the September 6, 2006 Consulting Proposal, RMI was to pay an option fee of \$10,000 to lock up the "contemplated shell company," again in reference to the shell company identified as PCS032. If RMI elected not to exercise the option on the "initial shell company," PCS was to deliver two additional (like) shell companies under the same option fee. Upon notification to exercise its option to purchase the shell company, PCS was to require the purchase amount of \$300,000 to be placed in PCS' escrow account with Wells Fargo Bank. PCS also agreed to provide RMI with the all necessary documents and events necessary to effectuate the transaction. Pursuant to the terms of the September 6, 2006 PCS proposal, PCS was to retain 5% of the authorized shares of the shell company (PCS032) as its fee for arranging



1 and providing the shell to RMI. PCS was also to receive, for its initial and continuing  
2 developmental and consulting services, a retainer in the amount of \$20,000 per month, for 12  
3 months, or until the first \$20 million in capital had been raised, whichever occurred first. PCS  
4 was also to receive 10% of the gross amount of all capital arranged for the company and required  
5 that RMI pre-pay all travel and travel related expenses and reimburse PCS for all out of pocket  
6 expenses.

7 107. Plaintiffs fully performed all conditions, covenants, and promises required by them  
8 pursuant to the Consulting Agreement. All consideration due to Defendants was paid. The  
9 option fee and the purchase price for a shell company Plaintiffs believed was the shell company  
10 identified as PCS032 were transferred to the bank account designated by Defendants. 2.5 million  
11 shares of FIBERTREK stock were issued to Defendants. Monthly retainers were paid to  
12 Defendants from October 2006 through April 2007.

13 108. In May, 2007, Plaintiffs' first learned of Defendants' scheme to defraud Plaintiffs.  
14 Defendants' acts and omissions constitute a material breach of the September 6, 2006 Consulting  
15 Agreement. Without authorization from Plaintiffs, Defendants acquired a different shell company  
16 from the shell company identified as PCS032. The company acquired, AWE, was considerably  
17 less valuable than the shell company identified as PCS032. The funds placed in what was  
18 represented as a PCS' trust account were expended without authorization from Plaintiffs. Despite  
19 repeated requests from Plaintiffs, Defendants failed to disclose the information on the shell  
20 company as required by the express terms of the agreement. Plaintiffs never had an opportunity  
21 to analyze the proposed shell company after payment of the option fee before committing the  
22 balance of \$290,000 as stated in the agreement. Despite repeated requests from Plaintiffs,  
23 Defendants have failed to provide transaction reports for the acquisition of AWE and its merger  
24 with FIBERTREK.

25 109. As a direct and proximate result of Defendants' breach of the September 6, 2006  
26 Consulting Agreement, Plaintiffs have suffered damages in an amount to be proven at trial.

27 //

28 //

**NINTH CAUSE OF ACTION**  
**(For Breach of the Implied Covenant of Fair Dealing)**

110. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 109, inclusive, as though fully set forth herein.

111. Inherent and implied by law and fact in the September 6, 2006 Consulting Agreement between PCS and RMI is the covenant of good faith and fair dealing imposing a duty of good faith and fair dealing on each party in its performance of the contract.

112. The September 6, 2006 Consulting Proposal set forth a recommended plan for RMI to raise the necessary capital to fund the Elko project through an RTO with the shell company that had been previously discussed, PCS032. The proposal references the "public vehicle first discussed" and "the contemplated shell company" in reference to the prior discussions concerning PCS032. The purchase terms for the shell company identified in the proposal are identical to the purchase terms previously provided by Defendants for PCS032.

113. Pursuant to the terms of the September 6, 2006 Consulting Proposal, RMI was to pay an option fee of \$10,000 to lock up the "contemplated shell company," again in reference to the shell company identified as PCS032. If RMI elected not to exercise the option on the "initial shell company," PCS was to deliver two additional (like) shell companies under the same option fee. Upon notification to exercise its option to purchase the shell company, PCS was to require the purchase amount of \$300,000 to be placed in PCS' escrow account with Wells Fargo Bank. PCS also agreed to provide RMI with the all necessary documents and events necessary to effectuate the transaction. Pursuant to the terms of the September 6, 2006 PCS proposal, PCS was to retain 5% of the authorized shares of the shell company (PCS032) as its fee for arranging and providing the shell to RMI. PCS was also to receive, for its initial and continuing developmental and consulting services, a retainer in the amount of \$20,000 per month, for 12 months, or until the first \$20 million in capital had been raised, whichever occurred first. PCS was also to receive 10% of the gross amount of all capital arranged for the company and required that RMI pre-pay all travel and travel related expenses and reimburse PCS for all out of pocket expenses.

114. Plaintiffs fully performed all conditions, covenants, and promises required by them pursuant to the Consulting Agreement. All consideration due to Defendants was paid. The option fee and the purchase price for a shell company Plaintiffs believed was the shell company identified as PCS032 were transferred to the bank account designated by Defendants. 2.5 million shares of FIBERTREK stock were issued to Defendants. Monthly retainers were paid to Defendants from October 2006 through April 2007.

115. In May, 2007, Plaintiffs' first learned of Defendants' scheme to defraud Plaintiffs. Without authorization from Plaintiffs, Defendants acquired a different shell company from the shell company identified as PCS032. The company acquired, AWE, was considerably less valuable than the shell company identified as PCS032. The funds placed in what was represented as a PCS' trust account were expended without authorization from Plaintiffs. Despite repeated requests from Plaintiffs, Defendants failed to disclose the information on the shell company as required by the express terms of the agreement. Plaintiffs never had an opportunity to analyze the proposed shell company after payment of the option fee before committing the balance of \$290,000 as stated in the agreement. Despite repeated requests from Plaintiffs, Defendants have failed to provide transaction reports for the acquisition of AWE and its merger with FIBERTREK.

116. The actions and omissions of Defendants described herein constitute a breach of the implied covenant of good faith and fair dealing in performance of the contract.

117. As a direct and proximate result of Defendants' breach of the implied covenant of good faith and fair dealing implied in all contracts, Plaintiffs have suffered damages in an amount to be proven at trial.

**TENTH CAUSE OF ACTION**  
**(For Unjust Enrichment Against All Defendants)**

118. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 117, inclusive, as though fully set forth herein.

119. Plaintiffs are informed and believe and on that basis allege that as a direct and proximate result of the acts and conduct alleged herein, each of the Defendants have been

1 unjustly enriched, and has obtained money, commissions, earnings and benefits including the  
2 issuance of shares of FIBERTREK from Plaintiffs to which Defendants are not otherwise entitled,  
3 and which they would not have obtained had the true facts been known to Plaintiffs.

4 120. At Defendants direction, Plaintiffs' transferred the sum of \$300,000 to a PCS trust  
5 account for the purchase of a shell company identified as PCS032. Without Plaintiffs'  
6 knowledge, Defendants had previously acquired a different shell company, AWE. The acquired  
7 shell company AWE was considerably less valuable than the shell company identified as  
8 PCS032. Plaintiffs are informed and believe and on that basis allege the remaining balance of the  
9 \$300,000 was distributed amongst Defendants for their own personal gain. Based on  
10 representations by Defendants of their continued efforts to finalize the terms of the acquisition of  
11 the shell company identified as PCS032 and the merger with FIBERTREK, Plaintiffs made other  
12 payments to Defendants including monthly retainers, travel expense reimbursements, the issuance  
13 of FIBERTREK and other related expenses for work never performed by Defendants. Plaintiffs  
14 would not have made paid these additional benefits to Defendants had the true facts been known  
15 to Plaintiffs.

16 121. Defendants have been unjustly enriched in an amount, not yet ascertained, which  
17 represents the total compensation and expense reimbursement unlawfully obtained from  
18 Plaintiffs, which rightfully belongs to Plaintiffs and should be returned.

### 19 PRAYER

20 WHEREFORE, Plaintiffs demand judgment as follows:

#### 21 **As to the First Cause of Action:**

- 22 1. Special Damages in an amount to be determined at trial;
- 23 2. An order that each defendant divest themselves of and/or deliver to Plaintiffs all of  
24 the proceeds of monies and other forms of consideration unlawfully obtained from Plaintiffs;
- 25 3. Treble damages pursuant to 18 U.S.C. §1964(c); and
- 26 4. Attorney's fees and costs pursuant to 18 U.S.C. §1964(c).

#### 27 **As to the Second, Third, Eighth, Ninth and Tenth Causes of Action:**

- 28 1. Damages in an amount to be determined at trial;

2. Restitution of moneys wrongfully obtained from Plaintiffs, in an amount to be determined at trial; and

3. An accounting of all amounts that defendants have wrongfully obtained from Plaintiffs.

**As to the Fourth, Fifth, Sixth and Seventh Causes of Action:**

1. Damages in an amount to be determined at trial;

2. Restitution of moneys wrongfully obtained from Plaintiffs, in an amount to be determined at trial;

3. An accounting of all amounts that defendants have wrongfully obtained from Plaintiffs; and

4. Punitive damages in the amount to be determined at trial.

Dated: July 11, 2008

ROPER, MAJESKI, KOHN & BENTLEY

By:



DOUGLAS W. DAL CIELO

BRIAN M. AFFRONTI

Attorneys for Plaintiffs

FIBERTREK, INC., LAWRENCE P.

WAGNER and JOHN G. PERRY

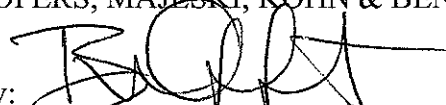
**DEMAND FOR JURY TRIAL**

Plaintiffs FIBERTREK, INC., LAWRENCE P. WAGNER and JOHN G. PERRY hereby demand trial by jury.

Dated: July 11, 2008

ROPER, MAJESKI, KOHN & BENTLEY

By:



DOUGLAS W. DAL CIELO

BRIAN M. AFFRONTI

Attorneys for Plaintiffs

FIBERTREK, INC., LAWRENCE P.

WAGNER and JOHN G. PERRY

JS 44 (Rev. 12/07) (cand rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

FIBERTREK, INC., a Nevada Corp., Lawrence P. Wagner, an individual, and John G. Peery, an individual

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DOUGLAS W. DAL CIELO (157109) / BRIAN M. AFFRONTI (227072)  
ROPER, MAJESKI, KOHN & BENTLEY  
50 West San Fernando Street, Suite 1400  
San Jose, CA 95113

**DEFENDANTS**

PREFERRED CORPORATE SERVICES, INC., a Colorado Corp., Douglas Gregg, an individual, et al.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**C08 03415**

**RS**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability  <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property					

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1332

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**

☐ SAN FRANCISCO/OAKLAND

☒ SAN JOSE

DATE

July 11, 2008

SIGNATURE OF ATTORNEY OF RECORD

*Michael M. Ce*